In the Supreme Court of the United States

October Term 1924

No. 339

SOUTHERN UTILITIES COMPANY,
a corporation,
Petitioner,
vs.
CITY OF PALATKA.

BRIEF FOR PETITIONER

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STATEMENT OF THE CASE

1. In 1914 the City granted to the petitioner a non-exclusive franchise to supply electric current to the City and its inhabitants, for thirty years, at a specified maximum rate. (R. 5).

2. Finding said rate inadequate to yield any return, due to changed economic conditions brought about by the late war, the petitioner put an increased rate into effect.

3. The City then applied to the appropriate state court for a mandatory injunction upon the theory that the rate provision of the franchise amounted to a contract obligation. (R. 1).

4. The petitioner justified by pleading that under Section 30 of Article 16 of the State Constitu-

tion there was no mutual obligation respecting the specified rate, and that the enforcement of the injunction would result in (a) the confiscation of its property without compensation, and (b) the deprivation of its property without due process of law, and (c) the denial to it of the equal protection of the laws. (R. 24).

5. This plea was held insufficient and a permanent injunction was granted by the trial court and, upon appeal was affirmed by the Supreme Court of Florida. (R. 31, 45).

6. The provision of the Florida Constitution in question is as follows:

> "The legislature is invested with full power to pass laws for the correction of abuses and to prevent unjust discrimination and excessive charges by persons and corporations engaged as common carriers in transporting persons and property, or performing other services of a public nature; and shall provide for enforcing such laws by adequate penalties or forfeitures."

ERROR RELIED UPON

The petitioner contends that the effect of the quoted Section of the Florida Constitution is to irrevocably vest in the legislature the continuing power to reduce or increase rates for services of a public nature, *notwithstanding any contract or ordinance fixing such rates,* and that the Florida Supreme

Court committed error demanding reversal in holding that the rates fixed are binding, regardless of whether they are confiscatory, so long as the legislature does not exercise its power under the Constitution.

ARGUMENT

The petitioner's proposition is that if the rate provision of the franchise ordinance is not a contract obligation in the sense that the legislature cannot change it in the exercise of the power conferred by the Constitution, then mutuality of obligation is lacking and the rate cannot be enforced to the prejudice of the petitioner.

In Tampa Waterworks Company vs. Tampa, 45 Fla. 600—affirmed by this Court, 199 U. S. 241,—there was involved a contract fixing maximum water rates. Subsequent to the date of the contract the legislature delegated to the City of Tampa its power to regulate water rates. The City then reduced the rates and the Waterworks Company sought an injunction on the proposition that the rate provision of the franchise amounted to a contract, the obligation of which could not be impaired by the later exercise of the power to regulate. The contention was denied and the reduced rates enforced—there being no contention or showing that their enforcement resulted in confiscation.

Later decisions by the Florida Supreme Court wherein rates were increased are Brooksville vs.

Florida Telephone Co., 81 Fla. 436, and Triay vs. Burr, 79 Fla. 290.

The only possible differentiating circumstance between these three cases and the instant case lies in the fact that here the legislature has made no delegation of its power to regulate, either to the City or to any other agency. This circumstance must supply the reason to support the Supreme Court of Florida in reaching a conclusion in this case directly opposite from its conclusions in the other cases referred to. And, as we contend, the decision here is in conflict with San Antonio vs. San Antonio Public Service Co., 255 U. S. 547, Southern Iowa Electric Company vs. Chariton, 255 U. S. 539 and Ortega Company vs. Triay, 260 U. S. 103. In Southern Iowa Electric Co. vs. Chariton, this Court said:

> "Two propositions are indisputable:
>
> "(a) That although governmental agencies having authority to deal with the subject may fix and enforce reasonable rates to be paid public utility corporations for the services by them rendered, that power does not include the right to fix rates which are so low as to be confiscatory of the properties of such corporations;
>
> "(b) That where, however, the public service corporations and the governmental agencies dealing with them have power to contract as to rates, and exert that power by fixing by contracts rates to govern during a particular time, the enforcement of such rates is controlled by the obligation resulting from the contract, and therefore the question of whether such rates are confiscatory becomes immaterial."

The petitioner's contention is that by reason of

Section 30 of Article XVI of the Florida Constitution, Florida falls within the first stated proposition.

In a broad sense it may be true, as the Florida Supreme Court holds, that the City has power to contract as to rates, but by reason of the power vested in the legislature by the Constitution such power is so qualified as to remove any contract as to rates from the operation of the rule of the second proposition above noted. This must be true, for the reason that mutuality is an essential of a binding contract obligation, and so long as the legislature, or the City under a delegation from the legislature, can change the rates at will notwithstanding a contract, there can be no such mutuality of obligation as is required. If the Florida legislature should now delegate the said power to regulate the rates in question, the mere delegation, without any attempt on the part of the City to exercise the power, would enable the petitioner to get relief from the confiscatory rates. That this is true is demonstrated by the telephone case and Triay vs. Burr, supra, where the legislative power under the Section of the Constitution in question had been delegated to the State Railroad Commission and the public service corporations had applied for rates greater than those fixed by the franchises under which they were operating.

We are mindful of the decision of this Court in Georgia Railway & Power Co. vs. Decatur, 262 U. S. 432. In that case the Georgia Supreme Court reached a conclusion which this Court followed, directly opposite to the conclusion reached by the Supreme Court of Florida in Triay vs. Burr, supra,

and, as we contend, in the instant case also. As there stated, this Court will determine for itself whether there is a contract and the extent of its obligations, and in arriving at its conclusions will lean to an agreement with the State Court. Except for the solitary distinguishing fact that the legislature has not delegated to the City, or any other agency, its power to control rates, the case here presented is identical with that presented in the Tampa Waterworks Co. vs. Tampa, supra. In that case this Court agreed with the Supreme Court of Florida and affirmed its decision. Now this Court is called upon to agree again with the Supreme Court of Florida, and unless the single distinguishing fact mentioned affords a sound reason this Court, in again agreeing with the Florida Supreme Court, will arrive at a conclusion directly opposite to that reached in the former case.

For the reasons stated, we respectfully submit that the decision of the Supreme Court of Florida should be reversed.

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